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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CBV, INC.,)
)
 Plaintiff,)
) C.A. No. 21-1456 (MN)
 v.)
)
 CHANBOND, LLC, et al.,)
)
 Defendants.)

Monday, April 25, 2022
4:35 p.m.
Hearing

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE MARYELLEN NOREIKA
United States District Court Judge

APPEARANCES:

BUCHANAN INGERSOLL & ROONEY, PC
BY: GEOFFREY GRAHAM GRIVNER, ESQ.
BY: KODY MACGYVER SPARKS, ESQ.

Counsel for the Plaintiff

BAYARD, P.A.
BY: STEPHEN B. BRAUERMAN, ESQ.
BY: RONALD P. GOLDEN, III, ESQ.

Counsel for the Defendant
ChanBond, LLC

1 APPEARANCES (Cont'd):

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3 TROUTMAN PEPPER HAMILTON SANDERS, LLP
4 BY: JAMES HARRY STONE LEVINE, ESQ.

5 -and-

6 KAMERMAN UNCYK SONIKER & KLEIN, PC
7 BY: AKIVA M. COHEN, ESQ.

8 Counsel for Defendant
9 Deirdre Leane and
10 Intervenor IPNAV, LLC

11 THE WILLIAMS LAW FIRM, P.A.
12 BY: JOHN WILLIAMS, ESQ.
13 BY: BRIAN C. CRAWFORD, ESQ.

14 Counsel for Intervenors
15 Gregory Collins and Kamal Mian

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16:34:15 16 THE COURT: Let's all hurry up. Okay?

16:34:17 17 All right. Let's start with some introductions.

16:35:52 19 MR. GRIVNER: Good afternoon, Your Honor.

16:35:52 20 Jeffrey Grivner of Buchanan Ingersoll & Rooney. With me
16:36:02 21 today is my colleague Kody Sparks. And we're here on behalf
16:36:02 22 of plaintiff, CBV. Thank you.

16:36:12 23 MR. BRAUERMAN: Good afternoon, Your Honor.

16:36:12 24 Stephen Brauerman from Bayard. I'm joined by my colleague
16:36:12 25 Ron Golden on behalf of ChanBond.

16:36:20 1 THE COURT: Good afternoon.

16:36:26 2 MR. LEVINE: Good afternoon, Your Honor. James
16:36:28 3 Levine from Troutman Pepper Hamilton & Sanders. I'm joined
16:36:31 4 by my co-counsel Akiva Cohen from the Kamerman Uncyk firm in
16:36:34 5 New York on behalf of Deirdre Leane and IPNAV.

16:36:38 6 THE COURT: Okay.

16:36:43 7 MR. WILLIAMS: Good afternoon, Your Honor. John
16:36:47 8 Williams of the Williams Law Firm on behalf of Gregory
16:36:51 9 Collins and Kamal Mian who are appearing on behalf of
16:36:54 10 UnifiedOnline. And I also have with me today Brian Charles
16:37:00 11 Crawford who is a director of our firm.

16:37:04 12 THE COURT: Okay. And is the counsel who is the
16:37:06 13 subject of this and who asked to be excused and I didn't
16:37:10 14 excuse here?

16:37:12 15 MR. WILLIAMS: Stephen Rader is not here. He's
16:37:15 16 in California Your Honor. We are the local counsel. We
16:37:18 17 will be presenting today.

16:37:18 18 THE COURT: He was the one who was the subject
16:37:20 19 of the motion. He is the one who was acting apparently
16:37:22 20 inappropriately and asked for a hearing and due process to
16:37:26 21 be heard. And he asked to be excused and I denied that
16:37:29 22 motion. So where is he? Why isn't he here? I denied the
16:37:32 23 motion, right, you saw that you shall. And he just decided
16:37:36 24 he didn't care, he wouldn't come.

16:37:40 25 MR. WILLIAMS: Your Honor, I guess the question

16:37:47 1 is, what is the agenda for the hearing today?

16:37:50 2 THE COURT: It's on the request to be heard on
16:37:53 3 the violation of the local rule on confidentiality. And he
16:37:59 4 is a key player in the violation that has been asserted.
16:38:04 5 And he asked to be excused from attending in person and I
16:38:09 6 denied that request. So now he has just decided not to
16:38:13 7 attend at all? Is that what I am to understand?

16:38:17 8 MR. WILLIAMS: It's correct, Your Honor, that he
16:38:20 9 is not attending. I believe our side thought there was
16:38:23 10 substantive arguments on the document in question --

16:38:27 11 THE COURT: Nope. Nope. Right now, I just want
16:38:31 12 to hear why -- I get it that there might be a substantive
16:38:35 13 argument, but those arguments should have been made before
16:38:38 14 the document was disclosed, and before it was refused to be
16:38:43 15 given back. Right? There was an order that said it was
16:38:48 16 sealed. Whether you disagree with that, what do you think
16:38:52 17 the appropriate response is, to come get the order lifted,
16:38:57 18 not just to disregard it. Is there any dispute about that?

16:39:03 19 MR. WILLIAMS: I guess the question, Your Honor
16:39:07 20 --

16:39:07 21 THE COURT: No, the question is the question I
16:39:09 22 just asked.

16:39:12 23 MR. WILLIAMS: Yes, Your Honor, there is a
16:39:16 24 question about that.

16:39:19 25 THE COURT: Really? This document was filed

16:39:18 1 under sealed pursuant to a court order and you thought, or
16:39:22 2 someone in your clients, these are people who want me to
16:39:25 3 allow them to intervene in this case, are saying we don't
16:39:30 4 care about your court order, Judge, we're just going to
16:39:33 5 decide on our own and we're not going to come back to you
16:39:36 6 and say Your Honor, maybe you ought to relook at that?

16:39:41 7 MR. WILLIAMS: The order to file under seal
16:39:46 8 governed access to the docket and this was basically not
16:39:49 9 obtained through the docket, and so the question is whether
16:39:53 10 the order actually governs this particular disclosure.

16:39:56 11 THE COURT: It's one thing if you say that they
16:40:00 12 gave it to you by mistake, but did you -- what happened when
16:40:04 13 they gave it to you? It was marked under seal confidential
16:40:08 14 when you got it, right?

16:40:11 15 MR. WILLIAMS: Actually what happened --

16:40:14 16 THE COURT: Was it marked under seal
16:40:18 17 confidential when you received it?

16:40:21 18 MR. WILLIAMS: I don't know because I don't
16:40:25 19 remember --

16:40:28 20 THE COURT: Mr. Brauerman.

16:40:31 21 MR. BRAUERMAN: Yes, Your Honor, the e-mail and
16:40:35 22 the filing indicated that it had been filed under seal.

16:40:38 23 THE COURT: So was it treated as under seal
16:40:42 24 where outside counsel only had access to that, or was it
16:40:46 25 given to people who were not outside counsel?

16:40:34 1 MR. WILLIAMS: Your Honor, I just need to create
16:40:37 2 a record here if you don't mind.

16:40:39 3 THE COURT: No, I need you to answer my
16:40:41 4 question. You can create whatever record you want, but now
16:40:45 5 I need to understand what's going on. Because you, your
16:40:50 6 co-counsel asked for a hearing, said don't do anything until
16:40:55 7 we have an opportunity to be heard. So I have some
16:40:58 8 questions as to what was being done that I need some answers
16:41:02 9 to. And you're not giving me those answers. You're saying
16:41:05 10 I just want to make a record. That's not the way it works.
16:41:08 11 Okay?

16:41:09 12 So it was marked confidential. There was a
16:41:12 13 court order where I allowed it to be treated as
16:41:15 14 confidential. Was it treated as confidential as in kept by
16:41:20 15 only outside counsel in the case?

16:41:24 16 MR. WILLIAMS: I need to explain the timeline,
16:41:27 17 Your Honor.

16:41:27 18 THE COURT: I need to just know the answer to
16:41:29 19 that question.

16:41:30 20 MR. WILLIAMS: Okay. Well, the document was
16:41:32 21 sent to people on ECMF, everyone concedes that, I'm
16:41:37 22 certainly not on it, Brian Crawford is, he wasn't in the
16:41:42 23 office. Mr. Rader received it. I don't know who he shared
16:41:45 24 it with specifically.

16:41:46 25 THE COURT: How are you here today? Mr. Rader

16:41:49 1 didn't bother to show up because he just didn't like that I
16:41:52 2 wanted him here in person and he asked to be excused and
16:41:56 3 didn't come. And now you're saying I don't know what
16:42:00 4 Mr. Rader did with it. If you were going to come and he
16:42:04 5 wasn't going to be here, don't you think you should have an
16:42:07 6 answer to that?

16:42:08 7 Because the question is, the question is not
16:42:11 8 right now whether it should have been marked confidential.
16:42:14 9 I get it. You have questions on that. But the fact is it
16:42:20 10 was. And you didn't come to me and say this shouldn't be
16:42:21 11 confidential, you just did something with it. So we now
16:42:29 12 need to know what was done with it, has it been recovered
16:42:34 13 and then at some point we can address whether it really
16:42:39 14 should be or part of it should be marked confidential. So
16:42:42 15 let's start with the part that I care about right now and
16:42:45 16 the reason that I had the hearing, which is, what was done
16:42:49 17 with the document? Were people other than outside counsel
16:42:53 18 given access to the document?

16:42:54 19 MR. WILLIAMS: I believe the client may have had
16:42:59 20 access to the document, Your Honor.

16:43:00 21 THE COURT: Okay. Anyone else?

16:43:02 22 MR. WILLIAMS: Not that I'm aware of.

16:43:03 23 THE COURT: Was anything done with it to make
16:43:06 24 that document public?

16:43:09 25 MR. WILLIAMS: Well, the question is, I think

16:43:13 1 Mr. Rader's understanding was the document should have
16:43:16 2 already been public.

16:43:17 3 THE COURT: Again, I get it. Totally
16:43:21 4 understand. But Mr. Rader doesn't get to make that
16:43:25 5 decision. I do. Okay? And you have to come to me to get
16:43:30 6 me to make that decision, you don't get to just decide it.
16:43:35 7 You do understand my concerns here which is your client went
16:43:39 8 to intervene in this case. One of the grounds for
16:43:43 9 intervention asked me to exercise my discretion. And I now
16:43:47 10 have some concerns about whether if I allow your clients to
16:43:51 11 be in the case you're just going to have my orders violated
16:43:55 12 left and right without any respect whatsoever for the Court.
16:43:59 13 Okay? And I have counsel who can't even be bothered to show
16:44:03 14 up and answer the questions. So we're not going to talk
16:44:07 15 about what you need to talk about right now, and whether or
16:44:11 16 not the decision was correct. I need you to just tell me,
16:44:15 17 where did it go? There was some allegations that it might
16:44:19 18 have been posted on websites. Was that done?

16:44:23 19 MR. WILLIAMS: Not that I'm aware of, Your
16:44:27 20 Honor.

16:44:28 21 THE COURT: Did you check? Did you ask anyone?

16:44:32 22 MR. WILLIAMS: Well, there was an order to
16:44:36 23 return the document. I understand that that order was
16:44:40 24 complied with by deleting the copy of the document that we
16:44:44 25 all had in our e-mail addresses and the client confirmed

16:44:43 1 that they also deleted the copy of the document.

16:44:45 2 THE COURT: Was any request made as to whether
16:44:47 3 or not the client had disseminated that information
16:44:51 4 anywhere?

16:44:52 5 MR. WILLIAMS: I don't know that for a fact,
16:44:54 6 Your Honor.

16:44:54 7 THE COURT: You don't know whether anyone asked
16:44:56 8 the client?

16:44:58 9 MR. WILLIAMS: I wasn't in direct contact with
16:45:01 10 the client, no, Your Honor.

16:45:05 11 THE COURT: All right. Mr. Brauerman, anything
16:45:10 12 you want to add? What do you want me to do here? Did you
16:45:15 13 get confirmation that ultimately they finally did delete the
16:45:19 14 document? Did you get that confirmation.

16:45:22 15 MR. BRAUERMAN: I received that confirmation
16:45:23 16 from Delaware counsel. I received what I interpreted as a
16:45:27 17 somewhat cryptic response from lead counsel.

16:45:31 18 THE COURT: What was the response?

16:45:33 19 MR. BRAUERMAN: The response was essentially it
16:45:35 20 wasn't from Mr. Rader, it was from a member of Mr. Rader's
16:45:40 21 team that the e-mail that we had circulated was deleted, but
16:45:42 22 they responded to that in such a way that the confidential
16:45:43 23 information was on another e-mail. And we asked them to
16:45:51 24 confirm that they deleted the second e-mail and we didn't
16:45:52 25 get a response.

16:45:57 1 Just to complicate matters, Friday evening in
16:46:00 2 their reply to the motion to intervene they attached an
16:46:04 3 e-mail that was filed publicly on the docket until this
16:46:07 4 afternoon. We asked them to remove it over the weekend and
16:46:10 5 obviously the clerk's office can't move that quickly. That
16:46:13 6 contains the very information that was in the award that
16:46:16 7 should have remained confidential and they filed it publicly
16:46:19 8 on the docket knowing that Your Honor had ordered it to be
16:46:24 9 under seal and then that Your Honor had ordered them to
16:46:28 10 delete it. So this continues to be in my view an
16:46:31 11 extraordinarily serious problem. I don't believe that
16:46:37 12 Delaware counsel is the problem, but clearly they are unable
16:46:41 13 or unwilling to resolve it. I would be happy to make a
16:46:44 14 request for relief if that's what Your Honor would like.

16:46:48 15 THE COURT: What do you want?

16:46:50 16 MR. BRAUERMAN: My request for relief is that
16:46:52 17 the motion to intervene be denied with prejudice; that
16:46:55 18 Mr. Rader's pro hac be revoked; that Mr. Rader be referred
16:46:59 19 to disciplinary counsel, and attorneys fees and costs be
16:47:02 20 awarded both in responding to the motion to intervene and in
16:47:05 21 connection with these issues.

16:47:07 22 I just want to be clear, Your Honor, we raised
16:47:10 23 this in a meet and confer before this happened. As soon as
16:47:14 24 the issue happened and we learn of it, I explained to them,
16:47:17 25 I got on the phone, I explained to them local Rule 26.2, I

16:47:22 1 explained to them what Your Honor was going to do. I begged
16:47:25 2 Delaware counsel not to make me file that letter. It is
16:47:29 3 embarrassing enough that we sent a document we ought not to
16:47:34 4 have sent, and did not want to make this any more public than
16:47:37 5 it needed to be. I begged them not to put us in this
16:47:41 6 position.

16:47:41 7 Mr. Rader was rude and belligerent. I have had
16:47:46 8 two meet and confers with him. He has ended both of them by
16:47:50 9 hanging up on me. In the first one, the question that I
16:47:52 10 asked him that he hung up on me, what is the basis of this
16:47:55 11 Court's jurisdiction over your cross claim because it's
16:47:59 12 broad diversity. I did not understand their 1367 argument.
16:48:04 13 And he hung up on me.

16:48:06 14 As you know, Your Honor, I'm in this court a
16:48:09 15 lot, I deal with a lot of lawyers, I generally don't have
16:48:12 16 issues. But I have never encountered this type of
16:48:17 17 unprofessionalism before.

16:48:19 18 So those are my requests, Your Honor.

16:48:21 19 THE COURT: All right. Do you have any laws
16:48:24 20 supporting you? And let me just ask you this, is there
16:48:27 21 anyway that the information that you say was filed over the
16:48:30 22 weekend could have been obtained other than through the
16:48:33 23 confidential information that was inadvertently sent?

16:48:36 24 MR. BRAUERMAN: No. I can hand up -- there are
16:48:39 25 public individuals in the courtroom.

16:48:48 1 THE COURT: Can you give it to me so I can read
16:48:51 2 it.

16:48:51 3 MR. BRAUERMAN: May I approach?

16:49:01 4 THE COURT: So this was filed?

16:49:04 5 MR. BRAUERMAN: This was filed publicly. This
16:49:06 6 e-mail was an exhibit. You can see at the top of it, Your
16:49:09 7 Honor, there is an CEMCF stamp. This same e-mail was filed
16:49:13 8 in two places on the docket, 87-2 and 88-2.

16:49:18 9 THE COURT: Which are what?

16:49:19 10 MR. BRAUERMAN: They are exhibits to the
16:49:21 11 opposition -- or I'm sorry to the reply in support of the
16:49:24 12 motion to intervene. And if Your Honor looks at the bottom
16:49:31 13 of the e-mail, you can see the numbers that were
16:49:41 14 confidential and were only obtained through the inadvertent
16:49:48 15 disclosure.

16:49:49 16 THE COURT: All right. Any dispute that these
16:49:51 17 numbers that were filed publicly on the docket were obtained
16:49:54 18 through the public, through the confidential disclosure?

16:49:59 19 MR. WILLIAMS: Your Honor, may I let Brian
16:50:01 20 Crawford respond to that?

16:50:02 21 MR. CRAWFORD: Thank you, Your Honor. We don't
16:50:12 22 dispute that they were filed on the public record. It was
16:50:18 23 inadvertent on our part, Your Honor. And my understanding
16:50:25 24 is that the numbers on there were from the information we
16:50:32 25 received from --

16:50:40 1 THE COURT: But here is my question. There was
16:50:42 2 a representation that the e-mail was deleted. It was
16:50:50 3 inadvertently sent. It was said that it was inadvertently
16:50:56 4 sent and no relief from the Court had been obtain. So aside
16:51:01 5 from the inadvertence, and I understand Mr. Brauerman
16:51:05 6 probably understands how inadvertence can happen, why was it
16:51:09 7 being referenced at all?

16:51:15 8 MR. CRAWFORD: In the filing --

16:51:16 9 THE COURT: Essentially you weren't supposed to
16:51:18 10 have the information, and it was deleted. And there was a
16:51:21 11 representation that it was deleted. Why is it now coming
16:51:25 12 back?

16:51:26 13 MR. CRAWFORD: Your Honor, my understanding was
16:51:28 14 that although it was represented, we represented that we
16:51:32 15 deleted the document in question which was the document at
16:51:37 16 issue.

16:51:38 17 THE COURT: But you just decided to -- what do
16:51:41 18 you do with the information that was confidential in that,
16:51:44 19 if you deleted the e-mail, I think that's the problem is
16:51:48 20 that once the -- it's not supposed to be -- you have the
16:51:52 21 document, you get the confidential information, you say I
16:51:58 22 deleted the document and then you continue using the
16:52:02 23 confidential information. The point is deleting the
16:52:06 24 document. I need him to listen to me for a moment.

16:52:08 25 MR. WILLIAMS: I'm sorry.

16:52:07 1 THE COURT: The point of the deleting the
16:52:08 2 document was to essentially get rid of you having possession
16:52:13 3 of the confidential information, not that you would then use
16:52:15 4 it.

16:52:16 5 MR. CRAWFORD: Yes, Your Honor. And the e-mail
16:52:20 6 in question was not the e-mail that was sent to us by
16:52:24 7 ChanBond, it was an e-mail from Mr. Rader. So it was a
16:52:28 8 separate e-mail. I understand Your Honor's point that it
16:52:32 9 contained the information that was in the order. But Your
16:52:35 10 Honor --

16:52:35 11 THE COURT: You understand what my problem is,
16:52:37 12 right, that Mr. Rader is now out there sending e-mails that
16:52:41 13 include information that he was ordered to give back as in
16:52:47 14 not continue to use.

16:52:50 15 MR. CRAWFORD: Yes.

16:52:51 16 THE COURT: And I understand that he doesn't
16:52:54 17 think that this is confidential, but he doesn't make that
16:52:56 18 decision. He has to come to me and ask me to do that. Not
16:53:00 19 use it and then ask me.

16:53:02 20 MR. CRAWFORD: Yes, Your Honor.

16:53:04 21 THE COURT: All right. So what do you think of
16:53:06 22 the relief that Mr. Brauerman just asked for?

16:53:08 23 MR. CRAWFORD: Your Honor, there is case law in
16:53:12 24 the Third Circuit, *U.S. v. Dougherty* that says the term
16:53:14 25 under seal means the defendants and public would not be able

16:53:21 1 to view the filed papers or learn the contents from the
16:53:24 2 docket. But in this case, the defendant clearly
16:53:27 3 disseminated the information to the public absent a
16:53:31 4 protective order. That is *U.S. v. Dougherty*, 627 Federal
16:53:37 5 Appendix 907, 207, the Third Circuit 2015.

16:53:40 6 Additionally, Your Honor, our understanding is
16:53:42 7 that rules of civil procedure only address protective orders
16:53:46 8 that are materially exchanged during discovery, that's --

16:53:51 9 THE COURT: Okay. Again, it's confidential. I
16:53:53 10 ordered you to return it, ordered you. Okay? So why is it
16:54:00 11 continuing to be used?

16:54:03 12 MR. CRAWFORD: Your Honor --

16:54:08 13 THE COURT: I asked you what do you think of the
16:54:10 14 relief. I mean, it seems like counsel for the interveners
16:54:16 15 has no respect for the Court or its orders. The allegations
16:54:24 16 are that your co-counsel who has been given the privilege of
16:54:29 17 being admitted pro hac in this case is rude and not
16:54:32 18 conducting himself as we expect people who are admitted into
16:54:37 19 this Court to act. Can anyone tell me that Mr. Brauerman's
16:54:42 20 representation about those discussions is wrong?

16:54:45 21 MR. CRAWFORD: Your Honor, with respect to
16:54:48 22 specifically the hanging up, on the first call I was on that
16:54:53 23 call with Mr. Brauerman and Mr. Rader and there was a
16:54:57 24 question posed kind of on the cuff as to jurisdiction. And
16:55:02 25 Mr. Rader gave his answers over and over and the question

16:55:06 1 about jurors was continued to be asked, so at that point, I
16:55:10 2 think Mr. Rader politely hung up. He said I think we're
16:55:16 3 done here. Have a good day. Something along those lines.
16:55:19 4 So he wasn't impolite, he just closed the meeting without
16:55:24 5 Mr. Brauerman signing off as well.

16:55:27 6 The second meeting involved all counsel and I
16:55:33 7 think that was a more abrupt hang up. But the tone in that
16:55:39 8 meeting by everyone, I believe, was pretty hostile, I'll say
16:55:44 9 hostile.

16:55:45 10 So again, it was an abrupt hang up, but I don't
16:55:51 11 know that his tone in that conversation was different than
16:55:56 12 anyone else's tone, really. So as far as his demeanor in
16:56:03 13 these meetings, I would be -- I would disagree with
16:56:08 14 Mr. Brauerman's interpretation.

16:56:18 15 Your Honor, also additionally, with respect to
16:56:22 16 --

16:56:22 17 THE COURT: No, I just want to -- why is this
16:56:25 18 okay? I don't mean the filing it publicly, because I
16:56:30 19 believe you when you tell me that was an accident. But why
16:56:32 20 is this information, Mr. Rader sending e-mails to other
16:56:37 21 people with this information in it, I mean, I ordered that
16:56:40 22 it not be disseminated and this e-mail was sent. Now this
16:56:42 23 e-mail was sent before that, but why was it attached?

16:56:51 24 MR. CRAWFORD: Your Honor, I don't know the
16:56:52 25 reasoning behind the attachment other than it was part of

16:56:59 1 the declaration by Mr. Rader. And in that declaration, he
16:57:03 2 was referring to the correspondence between counsel and
16:57:08 3 threats of -- this essentially started since we tried to
16:57:14 4 intervene, there have been references to Rule 15 even before
16:57:17 5 any sharing of documents, he felt that there was this open
16:57:22 6 hostility toward him and us and our clients trying to
16:57:25 7 intervene, trying to become part of this.

16:57:28 8 THE COURT: And maybe if he were trying to
16:57:31 9 intervene he would act in accordance with the Court's
16:57:35 10 orders, wouldn't you think?

16:57:38 11 MR. CRAWFORD: Yes, Your Honor.

16:57:39 12 THE COURT: And he hasn't, has he?

16:57:41 13 MR. CRAWFORD: Well, he filed the e-mail, Your
16:57:43 14 Honor.

16:57:43 15 THE COURT: And did he give the information back
16:57:46 16 when --

16:57:47 17 MR. CRAWFORD: Excuse me, I should say I filed
16:57:49 18 the e-mail, Your Honor.

16:57:51 19 THE COURT: But it was attached to his
16:57:52 20 declaration.

16:57:52 21 MR. CRAWFORD: Yes.

16:57:52 22 THE COURT: All right. So anything else you
16:58:00 23 want to add?

16:58:01 24 MR. CRAWFORD: Yes, Your Honor. Our
16:58:02 25 understanding is that the only basis for seeking

16:58:09 1 confidential treatment is that they don't provide concrete
16:58:17 2 particularized harm. This has been a document that was
16:58:21 3 filed on the public record, that makes it subject to the
16:58:25 4 common law --

16:58:27 5 THE COURT: It wasn't filed on public record.

16:58:29 6 MR. CRAWFORD: Yes, Your Honor.

16:58:30 7 THE COURT: No, it wasn't. It was filed under
16:58:33 8 seal and the issue was that it was inadvertently served.

16:58:36 9 MR. BRAUERMAN: Yes, Your Honor.

16:58:37 10 THE COURT: So it was not filed on the public
16:58:40 11 record. It was not.

16:58:41 12 MR. CRAWFORD: Excuse my. It was filed with the
16:58:43 13 Court, yes. I'm sorry, Your Honor. It was filed with the
16:58:44 14 Court and when it becomes --

16:58:48 15 THE COURT: Here is what you're missing. If you
16:58:52 16 don't think -- if you think something is improperly filed
16:58:55 17 under seal, here is my question. Do you just say well, I
16:59:01 18 don't think it's confidential and file it publicly, or do
16:59:05 19 you come to the Court and say that's not appropriately filed
16:59:11 20 under seal? I get it that you guys have questions, but the
16:59:15 21 way that you just disregard my role in the proceeding is
16:59:20 22 very disturbing to me because all I'm hearing is well, Your
16:59:30 23 Honor, it's not confidential. That's not the way we deal
16:59:32 24 with things. You don't get to say that. Mr. Rader doesn't
16:59:35 25 get to say that. No one does but me. Okay?

16:59:38 1 And I take your point and if they file things
16:59:41 2 that are confidential and you don't think they should have
16:59:43 3 been, the proper thing to do would have been to move, but
16:59:47 4 you didn't. And so now we are in this position where there
16:59:51 5 is a question of whether a violation of a court order has
16:59:54 6 occurred.

16:59:55 7 MR. CRAWFORD: Yes, Your Honor.

16:59:59 8 And as far as the confidentiality aspect of it,
17:00:06 9 as I mentioned, I think everything leading up to the -- when
17:00:15 10 there was only filing under seal in place, we believe that
17:00:19 11 that -- we're entitled to do what we want under *U.S. v.*
17:00:27 12 *Dougherty*.

17:00:28 13 And then, Your Honor, our concern is that as
17:00:33 14 noted, Rule 26 really applies to discovery issues.

17:00:40 15 THE COURT: It doesn't. No, it doesn't. I
17:00:44 16 mean, Rule 26.2, familiarize yourself with the rules of the
17:00:50 17 Court if you want to practice here. That's not right.
17:00:52 18 Okay? People use that -- we don't have that rule just so
17:00:56 19 that, you know, things can be produced in discovery and then
17:01:01 20 filed publicly on the docket. That's not the way it works.

17:01:05 21 And by the way, your brief didn't comply with
17:01:08 22 the rules of this Court, either, so we're not -- there is a
17:01:12 23 real concern I have that you folks aren't even trying to
17:01:17 24 comply with our rules.

17:01:20 25 So this is what I am going to do.

17:01:22 1 Mr. Brauerman, I need you to send me a
17:01:25 2 submission with some law or something that supports the
17:01:27 3 relief that you're requesting, something that would say that
17:01:31 4 what you're requesting is an appropriate sanction.

17:01:38 5 When can you get me that?

17:01:39 6 MR. BRAUERMAN: Can I have until the end of the
17:01:41 7 day tomorrow, Your Honor?

17:01:42 8 THE COURT: Yes. You can have 24 hours to
17:01:44 9 submit a response and I will rule.

17:01:47 10 MR. BRAUERMAN: Your Honor, I don't know if it's
17:01:49 11 helpful, I have two cases that were able to find right now.
17:01:50 12 One was *Johnson v. Trueblood*, 629 F.2d 302, Third Circuit
17:01:51 13 1980. The Third Circuit recognized the court has the
17:02:01 14 inherent power to revoke pro hac as long as there is notice
17:02:05 15 and a hearing.

17:02:05 16 THE COURT: Does this count as notice and a
17:02:07 17 hearing? I think that I did it because Mr. Rader asked for
17:02:11 18 notice. Mr. Rader seemed like he wanted to attend because
17:02:14 19 he asked me to be excused or allowed to participate
17:02:20 20 remotely. We are having jury trials in this courthouse, so
17:02:22 21 I can't say it is too dangerous for someone to come here and
17:02:22 22 have the notice that he wants. So okay, I think we have had
17:02:32 23 that.

17:02:34 24 MR. BRAUERMAN: I do, too, Your Honor. We had a
17:02:35 25 meet and confer before they filed their motion to ask

17:02:40 1 Mr. Rader to be excused. And I explain to them, I asked
17:02:44 2 them whether there was a medical reason or a personal issue
17:02:47 3 that precluded his attendance and none was explain to me.
17:02:51 4 And I said we're going to oppose. Even if we agree, I
17:02:55 5 didn't think Your Honor was going to approve it even if we
17:02:58 6 stipulated it because I understood that the purpose of this
17:03:01 7 hearing was to address his conduct.

17:03:04 8 THE COURT: And because he asked me for an
17:03:06 9 opportunity to be heard with proper notice.

17:03:10 10 MR. BRAUERMAN: And I'll note, Your Honor, just
17:03:12 11 so that it's clear, we filed a redacted version that
17:03:14 12 redacted the document they challenged the confidentiality of
17:03:16 13 in accordance with the rules --

17:03:21 14 THE COURT: That's the whole document.

17:03:25 15 MR. BRAUERMAN: Right. It was a confidential
17:03:27 16 arbitration award. But the way -- the mechanism -- and they
17:03:30 17 haven't filed a motion and for them to file a motion
17:03:32 18 challenging our redaction, that hasn't occurred. And at
17:03:34 19 this point I think it may be waived. But we were very
17:03:36 20 careful. We didn't redact any of the document. The only
17:03:38 21 thing that's redacted from that filing is that exhibit, it's
17:03:40 22 just the exhibit. I don't think we redacted any of the
17:03:42 23 argument in briefing or anything about the exhibit, it was
17:03:44 24 just the exhibit itself that we redacted.

17:03:46 25 THE COURT: That exhibit which is an arbitration

17:03:55 1 award, that award has not been docketed in any court?

17:03:59 2 MR. BRAUERMAN: Not to my knowledge.

17:04:00 3 THE COURT: Can you check on that, because
17:04:02 4 that's where the Third Circuit case law seems to come into
17:04:07 5 play.

17:04:07 6 MR. BRAUERMAN: Mr. Cohen has confirmed it has
17:04:09 7 not.

17:04:10 8 MR. COHEN: It has not.

17:04:10 9 THE COURT: All right.

17:04:11 10 MR. BRAUERMAN: I had one more cite.

17:04:12 11 THE COURT: If you could put it together. You
17:04:15 12 can put the cite on the record and we'll take a look.

17:04:17 13 MR. BRAUERMAN: It's a transcript ruling so
17:04:19 14 we'll attach it, but it's *BioRad v. 10X Genomics*, Judge
17:04:24 15 Andrews transcript from June 20th, 2018. The Court there
17:04:30 16 did not revoke the pro hac, but only because counsel showed
17:04:31 17 up and apologized. But it mentioned that the Court had
17:04:37 18 authority to revoke the pro hac there.

17:04:39 19 And while I'm here, I'll put this in the letter,
17:04:42 20 but with respect to attorney fees the Court has inherent
17:04:47 21 power certainly --

17:04:48 22 THE COURT: Who has denial of the motion?

17:04:52 23 MR. BRAUERMAN: I think that can be a sanction,
17:04:53 24 intervention certainly as to permissive intervention can be
17:04:58 25 deny. Intervention, it's fully briefed, Your Honor can read

17:05:01 1 it. You can deny it for any number of reasons, but
17:05:05 2 dismissal is permissive sanction in appropriate
17:05:08 3 circumstances. Certainly a denial of a motion to intervene,
17:05:11 4 can be, I would think, I haven't researched that issue. I
17:05:15 5 will over the next 24 hours and get back to Your Honor. But
17:05:18 6 if the Court can dismiss a case, I think the Court can deny
17:05:24 7 intervention even it's mandatory. We're happy to argument.
17:05:28 8 We have asked for argument. They don't come close. Their
17:05:32 9 cross claim on jurisdiction, a cross claim on diversity
17:05:36 10 doesn't have diverse parties on either side of it. So we'll
17:05:40 11 provide some --

17:05:42 12 THE COURT: What's the issue on subject matter
17:05:45 13 jurisdiction?

17:05:45 14 MR. BRAUERMAN: It's diversity. They're seeking
17:05:47 15 to intervene to file a cross claim with Unified on one side
17:05:51 16 which is Delaware entity and ChanBond on the other. And
17:05:55 17 ChanBond is a Delaware LLC. And they haven't addressed
17:05:59 18 that. 1367 doesn't address that. They're trying to
17:06:03 19 intervene to file a cross claim that this Court can't hear.

17:06:07 20 MR. CRAWFORD: Your Honor, we have arguments as
17:06:09 21 to that that have not been briefed at this point.

17:06:11 22 THE COURT: No. If that issue has been raised
17:06:13 23 and if it's not in your motion to intervene, when do you
17:06:16 24 think you would make those arguments?

17:06:20 25 MR. CRAWFORD: I believe it's in our reply brief

17:06:24 1 that we filed, which I'm not prepared to address here today.
17:06:26 2 But I will say our understanding is that when there is --
17:06:32 3 this is third-party cross practice, and once there is
17:06:39 4 established jurisdiction or jurisdiction over the main
17:06:42 5 matter then we're able to bring these claims.

17:06:44 6 MR. BRAUERMAN: 1367 says exactly the opposite
17:06:48 7 in the express language of the statute and we told them
17:06:51 8 that. And their reply does not address it.

17:06:55 9 THE COURT: All right. Okay. So I want a
17:06:59 10 response or something from you, Mr. Brauerman, tomorrow.
17:07:03 11 Response, 24 hours later so that would be by the close of
17:07:07 12 business on Wednesday. And then we will let you know if we
17:07:10 13 need more.

17:07:11 14 Yes, sir.

17:07:12 15 MR. LEVINE: Your Honor, James Levine from
17:07:15 16 Troutman Pepper. Not to be the cat bringing Your Honor a
17:07:19 17 mouse.

17:07:19 18 THE COURT: Is that a good thing or a bad thing?

17:07:21 19 MR. LEVINE: It's not a good thing. I'm trying
17:07:23 20 not to do a bad thing. There is one other item that needs
17:07:26 21 to be addressed. With respect to disclosure of this e-mail
17:07:29 22 on Friday which Mr. Brauerman raised, that document has
17:07:32 23 already been out in the public. The toothpaste is out of
17:07:35 24 the tube and members of the public have that document.

17:07:37 25 There is an active message board that

17:07:44 1 involves -- I mean, there are active posters that are
17:07:47 2 discussing these very issues. We believe that they likely
17:07:51 3 have this document. And as I said, once it's out, it's out,
17:07:56 4 and I'm not sure what we can do about that. But I would ask
17:08:01 5 Your Honor in addition to the relief that Mr. Brauerman
17:08:05 6 requested to potentially bring any individuals who have
17:08:08 7 already obtain that document which was improperly filed
17:08:13 8 within the ambit of the protective order of this Court and
17:08:16 9 ordered no further dissemination of that document.

17:08:20 10 THE COURT: I don't know that I have
17:08:21 11 jurisdiction over people on a message board. I don't know
17:08:25 12 how you would think I could enforce that.

17:08:29 13 MR. LEVINE: Hence the cat, Your Honor. It is a
17:08:33 14 concern. We can --

17:08:35 15 THE COURT: If you have some authority that says
17:08:39 16 I can do that, I will consider it, but I don't know what --

17:08:41 17 MR. BRAUERMAN: May I make a suggestion, Your
17:08:46 18 Honor. Do you think you can order Mr. Rader, who is the one
17:08:49 19 who caused this to be filed publicly, to make some effort to
17:08:54 20 recover it. He certainly represents two of the stockholders
17:08:58 21 who are participating in those message boards. He has
17:09:01 22 contact with other stockholders, at least he's represented
17:09:04 23 that to us. Certainly Your Honor can order him to attempt
17:09:07 24 to mitigate this.

17:09:09 25 THE COURT: Mr. Rader is the one who broke, who

17:09:14 1 violated this Court's order, and who even though he has not
17:09:19 2 moved to have this document placed on the public record,
17:09:26 3 just decided on his own that he would continue to use the
17:09:29 4 information even though I had ordered it to be returned, so
17:09:33 5 yeah, I think it's fair that Mr. Rader be required to use
17:09:39 6 his good faith efforts to retrieve the document or ask that
17:09:45 7 it be, explain that it was not properly out there and get it
17:09:50 8 back.

17:09:52 9 MR. COHEN: Your Honor, one other thing on the
17:09:53 10 subject of this message board. And the individuals who are
17:09:57 11 here who are truly lovely human beings, and so this is not
17:10:04 12 -- I appreciate that.

17:10:06 13 There has been discussion in this courtroom of
17:10:07 14 the fact that those numbers which are confidential and
17:10:12 15 sealed can be found in a document that could have been
17:10:15 16 downloaded by members, by other members of the message board
17:10:19 17 even if it wasn't these individuals. I would ask that the
17:10:21 18 Court order that anybody in this room who has heard that not
17:10:25 19 publicly disclose that fact to anybody who is not in this
17:10:28 20 room because what I would not like to have happen, and the
17:10:32 21 concern here is these numbers were in a settlement that I
17:10:35 22 understand has a confidentiality provision which would put
17:10:40 23 ChanBond in breach to the settling defendants if those
17:10:43 24 numbers become public.

17:10:45 25 THE COURT: If you knew that people who were

17:10:48 1 members of the public were in the courtroom, why did you not
17:10:50 2 ask me to close the courtroom before you want me to impose
17:10:55 3 on members of the public an order that was something stated
17:11:00 4 in open court with no, no requirement that, you know, or no
17:11:07 5 request that they be asked to leave and we close the
17:11:12 6 courtroom for a very short period of time.

17:11:14 7 MR. COHEN: Your Honor, my understanding walking
17:11:17 8 into the room was that request was going to be made before
17:11:19 9 that was discussed and unfortunately it wasn't until it was
17:11:21 10 discussed. And at that point it was --

17:11:24 11 THE COURT: I think that you can -- the members
17:11:26 12 of the public there are things here that were not supposed
17:11:30 13 to have been made public. You can ask them, but I am not
17:11:34 14 going to impose an order on them because there was no such
17:11:38 15 request made. It was all done on the public record.

17:11:42 16 MR. COHEN: I understand, Your Honor.

17:11:43 17 THE COURT: You all have a really strange way of
17:11:46 18 explaining to me that you have highly sensitive confidential
17:11:49 19 information out there when it seems that everybody is
17:11:52 20 treating it as if it's a big fat joke.

17:11:54 21 All right.

17:11:58 22 MR. BRAUERMAN: Your Honor, I didn't make the
17:12:02 23 statement. I'm the one that made the statement. I was
17:12:05 24 aware they were in here. I said I thought on the record
17:12:08 25 that I didn't want to have to seal the courtroom. I don't

17:12:11 1 think the fact that this e-mail was out there is necessarily
17:12:15 2 confidential, but the information --

17:12:17 3 THE COURT: We did not talk about the substance
17:12:20 4 of the e-mail.

17:12:21 5 MR. BRAUERMAN: I have been very careful not to
17:12:23 6 disclose the information that we are trying to keep private,
17:12:28 7 which is the substance of the arbitration award and the
17:12:31 8 actual numbers which are subject to the confidential order
17:12:35 9 signed by Judge Andrews in the patent case. That's what
17:12:38 10 we're trying to protect.

17:12:41 11 THE COURT: Okay. Any questions that you have
17:12:43 12 about what I ordered your co-counsel to do in terms of
17:12:48 13 trying to mitigate the damage caused by the second use of
17:12:51 14 confidential information and placing of it on the public
17:12:54 15 record?

17:12:58 16 Questions?

17:13:01 17 MR. WILLIAMS: Your Honor, is this going to be a
17:13:03 18 written order from you just so we can communicate it?

17:13:06 19 THE COURT: No. You have to get the transcript.

17:13:08 20 MR. WILLIAMS: Okay. I don't want to sort of --
17:13:11 21 I guess I don't remember receiving a second request to
17:13:14 22 delete the e-mail which Mr. Brauerman mentioned, but I do
17:13:17 23 understand that it still governs which is why we went above
17:13:20 24 and beyond trying to go on the weekend and trying to get
17:13:23 25 this thing off the record.

17:13:29 1 THE COURT: Just putting it on over the weekend,
17:13:34 2 I get it. It was a mistake. And there is a limit to how
17:13:38 3 much you can deal with that mistake over the weekend. The
17:13:42 4 problem I have is that it was attached. So the information
17:13:48 5 that was not supposed to be in the hands of the third
17:13:52 6 parties who are seeking to intervene or their counsel, that
17:13:56 7 information was, after I ordered it to be returned, it was
17:14:02 8 used as in attached to a declaration that was filed. That's
17:14:07 9 my problem.

17:14:10 10 MR. WILLIAMS: I understand, Your Honor.

17:14:11 11 The last thing I'm going to say is I have
17:14:16 12 communicated Mr. Rader about this matter, obviously, and I
17:14:19 13 don't think he was under the impression this was a hearing
17:14:23 14 to remove his pro hac vice, but, you know, I'm just letting
17:14:26 15 you know that I didn't think -- that wasn't my impression of
17:14:31 16 this hearing.

17:14:35 17 THE COURT: It was clearly a request. I mean,
17:14:39 18 he asked that no further action be taken without notice and
17:14:44 19 an opportunity to be heard. I gave him that. And he didn't
17:14:48 20 show up. So I think that you guys can respond to whatever
17:14:52 21 law there is, but I can't help it what Mr. Rader understood
17:15:01 22 because Mr. Rader didn't bother to show you. He asked me
17:15:04 23 for relief. I denied the relief. And he said okay, fine,
17:15:07 24 then I'm just not going to come. So that's what happens.

17:15:11 25 MR. WILLIAMS: Thank you.

17:15:11 1

THE COURT: All right. Anything else?

17:15:13 2

MR. BRAUERMAN: No, Your Honor. Thank you.

17:15:14 3

THE COURT: Thank you.

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(Court adjourned at 5:15 p.m.)

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I hereby certify the foregoing is a true and
accurate transcript from my stenographic notes in the proceeding.

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/s/ Dale C. Hawkins
Official Court Reporter
U.S. District Court

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